

REMARKS

Reconsideration of this application, in view of the following remarks, is respectfully requested.

Claims 57, 58 and 68-86 were originally presented for consideration in this divisional application after preliminary amendment. No claims have been canceled or added. Accordingly, claims 57, 58 and 68-86 are currently pending in this application.

The following rejections were set forth in the Office Action:

1. Claims 57, 58 and 68-86 stand rejected for obviousness-type double patenting over claims 1, 3-6, 8-14, 23, 24, 26, 40, 45 and 46 of U.S. Patent No. 6,808,022.

Regarding the double patenting rejections, these rejections are respectfully traversed. The examiner states in the Office Action that it is clear that the inventor could have included the instant claims in the issued patent. In fact, the inventor did include claims 57 and 58 in the application which issued as the '022 patent, but the examiner restricted these claims out of the application.

Please see the Office Action dated July 29, 2003 in application no. 10/147,567, which issued as the '022 patent. In this Office Action, the examiner alleged that the application contained claims directed to several patentably distinct species. The applicant was required to cancel the claims which were non-elected in response to this Office Action, in order to obtain issuance of the '022 patent.

The non-elected claims have now been presented in this divisional application. The examiner now alleges that the claims are not patentably distinct. This is improper. Please see MPEP §804 II. wherein it is stated that a double patenting rejection is not permitted where the claimed subject matter is presented in a divisional application as a result of a restriction requirement made in a parent application. Here, the applicant has presented claims in a divisional application directed to a species restricted out of a parent application, and so a double patenting rejection is not permitted.

In view of the foregoing remarks, all of the claims pending in this application are now seen to be in a condition for allowance. A Notice of Allowance of claims 57, 58 and 68-86 is therefore earnestly solicited.

An Information Disclosure Statement was filed on January 7, 2005. The examiner is respectfully requested to consider the references cited therein prior to issuance of the Notice of Allowability.

The examiner is hereby requested to telephone the undersigned attorney of record at (972) 516-0030 if such would expedite the prosecution of the application.

Respectfully submitted,

KONNEKER & SMITH, P.C.



Marlin R. Smith  
Attorney for Applicant  
Registration No. 38,310

Dated: *Apr. 29, 2005*

660 North Central Expressway  
Suite 230  
Plano, Texas 75074  
(972) 516-0030

I hereby certify that this correspondence is being  
deposited with the United States Postal Service as  
first class mail in an envelope addressed to:  
Commissioner for Patents, P.O. Box 1450,  
Alexandria, VA 22313-1450,

on MAY 3, 2005

Sherrill J. J. J.